

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matter of
EFFECTS OF COMMUNICATIONS
TOWERS ON MIGRATORY BIRDS

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WT Docket No. 03-187

To: The Commission

COMMENTS OF AT&T WIRELESS SERVICES, INC.

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Dated: November 12, 2003

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AT&T Wireless Services, Inc. ("AWS") submits these comments in response to the Federal Communication Commission's ("FCC's" or "Commission's") Notice of Inquiry ("NOI") seeking comment and information on the impact that communications towers may have on migratory birds.¹

AWS provides advanced mobile wireless services to millions of subscribers across the United States and beyond, often using facilities supported by towers. Wireless telecommunications services are well established in all parts of the country, and have rapidly become an indispensable network of services upon which our citizens increasingly depend for commerce, personal and public safety and homeland security.

The nation's wireless networks are far from completed, however, and much remains to be done to extend current services to all populated areas and travel corridors, and to construct the new facilities needed to support the next generation of advanced broadband mobile services. It is therefore critically important that the additional towers necessary to develop, strengthen and secure our country's wireless network are constructed as rapidly as possible, free from the delay that can be caused by unnecessary or ill-advised regulation.

¹ 68 Fed. Reg. 53696 (September 12, 2003).

At the same time, AWS recognizes the importance of avian conservation. AWS acknowledges that its network facilities and towers can and must be sited and constructed in compliance with, and proper consideration for, the federal laws designed to protect birds.

Over the past five years, the U.S. Fish and Wildlife Service ("USFWS") and avian conservation groups have made demands of the Commission and the wireless industry to take action to address the issue of bird collisions with towers. These calls for regulatory action have been growing, as have the estimates of the magnitude of the problem. As the Commission recognizes in the NOI, however, the claims regarding danger to migrating birds from tower structures have been largely unsupported by scientific evaluation, measurement or explanation. This lack of reliable scientific knowledge has hindered the ability of both government and industry to understand the problem and address it with an effective and appropriately scaled approach.

AWS appreciates and commends the FCC for its efforts to solicit sound scientific information in support of its regulatory policies and believes that this NOI is properly directed toward that goal. In consideration of the uncertain state of knowledge about this problem, and the Commission's responsibilities under both the Communications Act and federal environmental laws, AWS recommends that the Commission consider undertaking the following next steps.

First, it is most reasonable for the Commission and the USFWS to postpone further regulatory action to address the asserted problem of migratory bird deaths at towers pending: (a) further scientific study; (b) clearly supportable scientific conclusions regarding the existence, nature, magnitude, trend and causes of the problem; and (c) the identification of practical and reasonably effective solutions whose costs are justified in light of the benefits to be obtained by their use.

Second, the Commission should review the available scientific literature to confirm that cellular wireless telecommunications towers, typically those less than 300 feet in height, pose

no significant danger to migratory birds and on that basis continue their categorical exclusion from environmental processing under the Commission's environmental rules.²

Third, as suggested in the NOI, the Commission should undertake to develop a Memorandum of Understanding ("MOU") with the USFWS to define and clarify the relationship and respective responsibilities of the two agencies with regard to federal laws designed to protect the environment and birds.

The MOU with the USFWS should seek to provide guidance to the industry on the issues that have been the most troubling in this area. In particular, AWS believes that the MOU should seek to accomplish, among other things, the following: (1) clarify the responsibilities and authority of applicants and licensees under federal laws designed to protect birds, and how best to provide guidance to the wireless industry about compliance with these laws; (2) develop guidelines with the Federal Aviation Administration and industry on tower lighting schemes that appropriately balance aviation safety with bird protection; and (3) confirm that the USFWS Interim Guidelines³ are strictly voluntary.

Finally, AWS believes that many of the issues involving birds and towers can best be addressed by the FCC, working together with the USFWS and in consultation with industry, to develop effective, understandable, common-sense, and science-based guidance and regulations directed at helping the wireless industry rapidly build out the nation's critically needed advanced networks, while at the same time helping to protect migratory birds from the danger of collisions with towers.

² See, e.g., Paul Kerlinger, *Avian Mortality at Communications Towers: A Review of Recent Literature, Research and Methodology*, Prepared for the United States Fish and Wildlife Service, Office of Migratory Bird Management, at 15 (2000), available at <http://migratorybirds.fws.gov/issues/towers/review.pdf> ("Little evidence was found implicating towers less than about 300-450 feet in towerkills that involved anything greater than a few birds.").

³ See USFWS "Interim Guidelines for Recommendations On Communications Tower Siting, Construction, Operation and Decommissioning" (September 21, 2000) ("USFWS Interim Guidelines").

Respectfully submitted,

Dated: November 12, 2003

AT&T WIRELESS SERVICES, INC.

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